

Update: Sexual Assault Benchbook

CHAPTER 3

Other Related Offenses

3.7 Child Sexually Abusive Activity

E. Pertinent Case Law

4. Definition of Terms

Insert the following case summary after the first paragraph on page 136:

A person “produces” or “makes” child sexually abusive material when the person reproduces prohibited images by copying them to a recordable compact disc (CD-R). *People v Hill*, ___ Mich App ___, ___ (2006). In *Hill*, the defendant argued that he was improperly charged with violating MCL 750.145c(2) because he merely possessed child sexually abusive material. The defendant asserted that his conduct of copying images he had downloaded from an internet website onto CD-Rs was not the equivalent of producing child sexually abusive material; instead, the defendant argued that his copies on CD-Rs represented only the storage of child sexually abusive material. *Hill, supra* at ___. The circuit court disagreed and bound the defendant over on charges that he violated MCL 750.145c(2).

The Court of Appeals affirmed the circuit court’s conclusion that “following the mechanical and technical act of burning images onto the CD-Rs, something new was created or made that did not previously exist” so that the defendant was properly charged with violating MCL 750.145c(2). *Hill, supra* at ___. The Court of Appeals noted that MCL 750.145c(1)(m) specifically defines “child sexually abusive material” as “any reproduction, copy, or print of [a prohibited] photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.” *Hill, supra* at ___. According to the *Hill* Court, notwithstanding the plain language of the statute that criminalizes the defendant’s conduct,

“[t]he evidence reflects that defendant burned the illegal images and videos onto the CD-Rs, thereby placing child sexually abusive material on new storage devices, the CD-Rs, which material was compiled in a format and manner determined solely by defendant, considering that he personally burned and spliced particular picture and video files onto particular CD-Rs. The CD-Rs, as compiled by defendant, were defendant’s own creations; he made child-pornography CD-Rs.” *Hill, supra* at ____.

CHAPTER 3

Other Related Offenses

3.10 Disorderly Person (Common Prostitute/Window Peeper/Indecent or Obscene Conduct)

C. Sex Offender Registration

Effective February 1, 2006, 2005 PA 301 amended the list of “listed offenses” in MCL 28.722(e). On page 143, change the citation in the second dashed item to MCL 750.335a(2)(a) and insert the following text immediately before the last paragraph in this subsection:

A violation of MCL 750.335a(2)(b) if the person has previously been convicted of violating MCL 750.335a is a “listed offense” under SORA. MCL 28.722(e)(iii).

Note: MCL 750.335a(2)(b) is a new violation added by 2005 PA 300, effective February 1, 2006. MCL 750.335a(2)(b) states: “If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts, while violating subsection (1), the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.”

CHAPTER 3

Other Related Offenses

3.11 Dissemination of Sexually Explicit Matter to Minors

A. Statutory Authority—Disseminating and Exhibiting

2. Statutory Exceptions

Effective February 1, 2006, 2005 PA 245 amended MCL 722.676(a) to qualify the exception for parents or guardians. Replace (a) in the quotation of MCL 722.676 near the bottom of the first page of the January 2004 update to page 144 with the following:

“(a) A parent or guardian who disseminates sexually explicit matter to his or her child or ward unless the dissemination is for the sexual gratification of the parent or guardian.”

CHAPTER 3

Other Related Offenses

3.16 Indecent Exposure

A. Statutory Authority and Penalties

Effective February 1, 2006, 2005 PA 300 amended MCL 750.335a, the statute defining the crime of indecent exposure. Replace the content of the March 2003 update to page 160 with the following text:

MCL 750.335a prohibits a person from knowingly making an open or indecent exposure of himself or herself or of another person. Specifically, MCL 750.335a states:

“(1) A person shall not knowingly make any open or indecent exposure of his or her person or of the person of another.

“(2) A person who violates subsection (1) is guilty of a crime, as follows:

“(a) Except as provided in subdivision (b) or (c), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

“(b) If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breasts, while violating subsection (1), the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

“(c) If the person was at the time of the violation a sexually delinquent person, the violation is punishable by imprisonment for an indeterminate term, the minimum of which is 1 day and the maximum of which is life.”

C. Sex Offender Registration

Effective February 1, 2006, 2005 PA 301 amended the list of “listed offenses” in MCL 28.722(e). On page 161, change the citation in the first dashed item to MCL 750.335a(2)(a) and insert the following text immediately before the last paragraph in this subsection:

A violation of MCL 750.335a(2)(b) if the person has previously been convicted of violating MCL 750.335a is a “listed offense” under SORA. MCL 28.722(e)(iii).

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

A. Who Must Register?

2. “Listed Offense”

Beginning on page 515, replace the content of this sub-subsection with the following text:

A “listed offense” means any of the offenses found in MCL 28.722(e)(i)–(xiv):*

- ♦ Accosting, enticing or soliciting a child for immoral purposes, MCL 750.145a.
- ♦ Accosting, enticing or soliciting a child for immoral purposes, second offense, MCL 750.145b.
- ♦ Child sexually abusive activity, MCL 750.145c.
- ♦ Crimes against nature or sodomy, if a victim is an individual less than 18 years of age, MCL 750.158.
- ♦ Indecent exposure when an individual is fondling his or her genitals, pubic area, buttocks, or, if the person is female, breast, if that individual was previously convicted of indecent exposure, MCL 750.335a(2)(b).*
- ♦ A third or subsequent violation of any combination of the following:
 - Disorderly person (indecent or obscene conduct), MCL 750.167(1)(f), or a local ordinance of a municipality substantially corresponding to MCL 750.167(1)(f).
 - Indecent exposure, MCL 750.335a(2)(a), or a local ordinance of a municipality substantially corresponding to MCL 750.335a(2)(a).
- ♦ Except for a juvenile disposition or adjudication, gross indecency between males if a victim is an individual less than 18 years of age, MCL 750.338.
- ♦ Except for a juvenile disposition or adjudication, gross indecency between females if a victim is less than 18 years of age, MCL 750.338a.

*As amended, effective February 1, 2006. 2005 PA 301.

*Effective February 1, 2006.

- ♦ Except for a juvenile disposition or adjudication, gross indecency between males and females if a victim is less than 18 years of age, MCL 750.338b.
- ♦ Kidnapping, MCL 750.349, if a victim is less than 18 years of age.
- ♦ Kidnapping child under the age of 14, MCL 750.350.
- ♦ Soliciting and accosting, MCL 750.448, if a victim is less than 18 years of age.
- ♦ Pandering, MCL 750.455.
- ♦ First-degree criminal sexual conduct, MCL 750.520b.
- ♦ Second-degree criminal sexual conduct, MCL 750.520c.
- ♦ Third-degree criminal sexual conduct, MCL 750.520d.
- ♦ Fourth-degree criminal sexual conduct, MCL 750.520e.
- ♦ Assault with intent to commit criminal sexual conduct, MCL 750.520g.
- ♦ Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age.

Note: The elements of this “catch-all” provision are: (1) the defendant must have been convicted of a state law violation or a municipal ordinance violation; (2) the state law or municipal ordinance violation must, “by its nature,” constitute a “sexual offense”; and (3) the victim of the state law or municipal ordinance violation must be under 18. See *People v Meyers*, 250 Mich App 637, 655 (2002) (defendant’s conviction under MCL 750.145d(1)(b) for using the internet to communicate with a person for the purpose of attempting to commit conduct proscribed under MCL 750.145a, satisfied the foregoing “catch-all” elements and required him to register under SORA, even though his exact conviction was not a “listed offense”).

- ♦ An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in MCL 750.10a.
- ♦ An attempt or conspiracy to commit an offense described above.

Note: In *Meyers, supra*, the Court of Appeals held that the defendant was required to register under the foregoing provision even though his exact conviction under MCL 750.145d(1)(b) was not a “listed offense,” because he used the internet to communicate with a person for the purpose

of *attempting* to commit conduct proscribed by MCL 750.145a (accosting, enticing, or soliciting a child), which is a “listed offense” under SORA.

- ♦ An offense substantially similar to an offense described above under a law of the United States, any state, or any country or under tribal or military law.

CHAPTER 11

Sex Offender Identification and Profiling Systems

11.2 Sex Offenders Registration Act

F. Yearly or Quarterly Verification of Domicile or Residence

1. Yearly Verification (Misdemeanor Offenses)

Effective January 1, 2006, 2005 PA 322 amended the language used in MCL 28.725a(4)(a) and eliminated the list of misdemeanor listed offenses found in MCL 28.725a(4)(a). Delete sub-subsection (1) in the October 2002 update to page 522. Near the bottom of page 522, change the title of sub-subsection (1) as indicated above and beginning with the paragraph at the bottom of page 522 and continuing on page 523, replace the existing text with the following:

An individual who is not incarcerated and who is registered as required by MCL 28.725a(3) or (4) for one or more listed offenses that are misdemeanors must verify his or her domicile or residence yearly in person, no earlier than January 1 and no later than January 15, at the local law enforcement agency, sheriff's department, or State Police post. MCL 28.725a(4)(a).

Under MCL 28.725a(4)(a), “‘misdemeanor’ means that term as defined in . . . MCL 761.1.”

Note: MCL 761.1(h) defines “misdemeanor” as “a violation of a penal law of this state that is not a felony or a violation of an order, rule, or regulation of a state agency that is punishable by imprisonment or a fine that is not a civil fine.”

2. Quarterly Verification (Felony Offenses)

Effective January 1, 2006, 2005 PA 322 amended the language used in MCL 28.725a(4)(b) and eliminated the list of felony listed offenses found in MCL 28.725a(4)(b). Delete sub-subsection (2) in the October 2002 update to page 522. On page 523, change the title of sub-subsection (2) as indicated above and beginning with the first paragraph on page 523 and continuing on page 524, replace the existing text with the following:

An individual who is not incarcerated and who is registered as required by MCL 28.725a(3) or (4) for one or more listed offenses that are felonies must verify his or her domicile or residence quarterly in person, no earlier than the first day and no later than the fifteenth day of each April, July, October, and January, at the local law enforcement agency, sheriff's department, or State Police Post. MCL 28.725a(4)(b).

Under MCL 28.725a(4)(b), “‘felony’ means that term as defined in . . . MCL 761.1.”

Note: MCL 761.1(g) defines “felony” as “a violation of a penal law of this state for which the offender, upon conviction, may be punished by death or by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.”